

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:

VALLEY MEDIA, INC.,

Debtor.

Chapter 11

Case No. 01-11353 (PJW)

COMMONWEALTH OF
MASSACHUSETTS DEPARTMENT OF
REVENUE,

Appellant/Creditor,

v.

VALLEY MEDIA, INC.,

Appellee/Debtor.

C.A. No. 05-179 (JJF)

**VALLEY MEDIA LIQUIDATING TRUSTEE'S
MOTION FOR LEAVE TO FILE A SUR-REPLY BRIEF
IN RESPONSE TO APPELLANT'S REPLY BRIEF**

Pursuant to D. Del. L.R. 7.1.2, Albert Kirchhein, as Liquidating Trustee (the "Liquidating Trustee") for the estate of Valley Media, Inc., pursuant to the Liquidating Plan of Valley Media, Inc., hereby moves this Court for an order, in the form attached hereto, granting the Liquidating Trustee leave to file a short sur-reply in response to the reply brief (the "Reply Brief") of the Commonwealth of Massachusetts Department of Revenue (the "Appellant") filed with this Court on July 18, 2005. The attached sur-reply responds to three points raised by the Appellant in its Reply Brief and is necessary in order to address misleading statements made in the Reply Brief.

Appellant has made misleading statements in its Reply Brief that were not previously included in its opening brief and as such the Liquidating Trustee has not had an opportunity to respond to these misleading statements. The Liquidating Trustee believes that fairness dictates that it be permitted to point out these inaccuracies before the Court rules on Appellant's pending appeal. Accordingly, the Liquidating Trustee respectfully requests that it be granted leave to file a sur-reply brief in the form attached hereto as Exhibit A.

Dated: July 25, 2005

MORRIS, NICHOLS, ARSHT & TUNNELL

/s/ Joanna F. Newdeck

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